

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

NICKIE HURLEY,

Plaintiff

v.

Civil Action No.: 2:07-0227

UMWA HEALTH & RETIREMENT FUNDS,

Defendant

MEMORANDUM OPINION AND ORDER

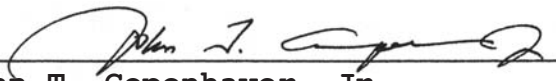
Pending is defendant's motion to strike plaintiff's demand for a jury trial ("motion to strike"), filed October 19, 2007.

In his November 13, 2007, response brief, plaintiff contends that defendant "should file a copy of the administrative record and then cross motions [for summary judgment should] be filed with regard to the Plaintiff's eligibility for benefits." (Pl.'s Resp. at 1). The parties' positions are in accord with our court of appeals' consistently expressed view that no right to a jury trial attaches in actions, like this one, filed pursuant to 29 U.S.C. § 1132(a)(1)(B). See, e.g., Berry v. Ciba-Geigy, 761 F.2d 1003, 1007 (4th Cir. 1985).

The court, accordingly, ORDERS that defendant's motion to strike be, and it hereby is, granted, and plaintiff's jury demand be, and it hereby is, stricken.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record.

DATED: November 30, 2007



John T. Copenhaver, Jr.
United States District Judge